

Message Text

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ACTION DLOS-09

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DOTE-00 EB-08 EPA-01 SOE-02 DOE-15 FMC-01 TRSE-00
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C O N F I D E N T I A L SECTION 01 OF 03 GENEVA 07263

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS CONFERENCE - MAY 10 HIGHLIGHTS

BEGIN SUMMARY. FIRST COMMITTEE NEGOTIATING GROUPS PUSHED FORWARD IN DISCUSSION OF THE NJENGA PROPOSALS, FINANCIAL ARRANGEMENTS AND THE COUNCIL. THE SECOND COMMITTEE WAS FLOODED WITH INTERVENTIONS ON ARTICLE 55 (ECONOMIC ZONE). THE NG-5 CHAIRMAN'S TEXT HAS GAINED A CONDITIONAL CONSENSUS TWO US PROPOSALS WERE SUBMITTED IN NG-7. WORK CONTINUED ON POLLUTION AMENDMENTS. END SUMMARY.

1. NG-1 LISTENED TO A LARGE NUMBER OF SPEAKERS ON THE NJENGA PROPOSALS IN DOCUMENT NG-1/6. THE REACTIONS GENERALLY CONTINUED TO BE PRAISE FOR NJENGA'S EFFORTS WHILE POINTING OUT DIFFICULTIES WITH CERTAIN PROVISIONS. THE MOST IMPORTANT DIFFERENCES WERE VOICED ON THE REVIEW CLAUSE AND TRANSFER OF TECHNOLOGY (TOT). THE US REPRESENTATIVE (ALDRICH) EXPRESSED THE HOPE THAT THE
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PACKAGE WOULD FIND ITS WAY INTO THE REVISED TEXT AS A BETTER BASIS FOR FUTURE COMPROMISE THAN THE ICNT, WHILE AT THE SAME TIME STATING HIS RESERVATIONS, SOME SERIOUS, ON THE REVISED TEXTS. THE STATEMENT OUTLINED DRAFTING AND/OR SUBSTANTIVE DIFFICULTIES WITH ALMOST ALL OF THE ARTICLES. THE MOST SERIOUS DIFFICULTIES ARE WITH REVISED ARTICLE 153 PARA 6 (THE POSSIBILITY THAT THE ASSEMBLY COULD

IMPOSE A MORATORIUM ON MINING BY CONTRACTORS AND THE ENTERPRISE IF THE REVIEW CONFERENCE FAILED TO REACH AGREEMENT AFTER 5 YEARS); AND ON ANNEX II PARA 4CII (TOT PROVISIONS) PARTICULARLY PARA 4CII (QUINTE) REGARDING TRANSFER OF TECHNOLOGY TO DEVELOPING COUNTRIES.

2. NG-2 CHAIRMAN KOH CONSULTED PRIVATELY WITH DELEGATIONS FROM INDUSTRIALIZED COUNTRIES WHILE THE G-77 MET ON MAY 10. DEBATE IN NG-2 CENTERED ON THE MOST CONTENTIOUS ISSUE: HOW MUCH VALUE ADDED TO THE FINISHED METALS SHOULD BE ATTRIBUTED TO THE NODULES. KOH TRIED TO CIRCUMVENT THIS PROBLEM BY FOCUSING THE DISCUSSION ON A PERCENTAGE OF THE PRICE OF FINISHED METALS WITHOUT REGARD TO VALUE ADDED ATTRIBUTION. THE U.S. STATED THAT IT DID NOT OPPOSE THIS APPROACH BUT EMPHASIZED THAT IT WOULD LEAD TO FIGURES 1/5TH THE SIZE OF THOSE DISCUSSED UNDER THE PENDING U.S. PROPOSAL (WHICH ATTRIBUTED 20 PERCENT OF THE VALUE ADDED TO NODULES). THE EEC AND JAPAN OBJECTED TO THE USE OF KOH'S SUGGESTED APPROACH FOR POLITICAL REASONS. THEY FELT THAT AN INITIATIVE WHICH DID NOT ATTRIBUTE VALUE ADDED TO MINING ACTIVITIES ONLY IMPINGED ON THE SOVEREIGNTY OF STATES IN WHICH PROCESSING AND MARKETING TOOK PLACE. BECAUSE OF THESE OBJECTIONS, KOH DID NOT PURSUE THIS MATTER ALTHOUGH INDICATING HIS PERSONAL PREFERENCE FOR IT. THE U.S. POSITION IS THAT THE VALUE ADDED BY MINING IS A RATIO OF DEVELOPMENT COSTS AND OPERATING COSTS DIRECTLY

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ATTRIBUTABLE TO MINING ACTIVITY OVER DEVELOPMENT AND OPERATING COSTS OF THE TOTAL OPERATION. THIS RATIO, USING THE MIT ASSUMPTIONS, COMES OUT TO 20-23 PERCENT DEPENDING ON WHETHER EXPLORATION AND PROSPECTING COSTS ARE INCLUDED IN THE DENOMINATOR. THE POSITION CLOSEST TO THIS EXPRESSED BY A MEMBER OF THE GROUP OF 77 WAS CHILE'S 38 PERCENT ATTRIBUTION OF VALUE ADDED TO MINING ACTIVITY.

3. IN ITS PRIVATE MEETING WITH KOH, THE US DELEGATION COMMENDED HIM FOR THE SUCCESSFUL HANDLING OF THE FINANCIAL ARRANGEMENTS ISSUE WHICH PREVIOUSLY HAD BEEN VIRTUALLY UNNEGOTIATED. THE U.S. URGED THAT KOH'S PROGRESS SHOULD BE REFLECTED IN THE REVISED ICNT IN SUCH A WAY AS TO INDICATE THE STRUCTURE THAT HAS BEEN NEGOTIATED WHILE LEAVING THE SPECIFIC FIGURES BLANK. KOH WANTS TO PUT IN NUMBERS IF AT ALL POSSIBLE BECAUSE HE FEARS THAT FAILURE TO DO SO WOULD UNRAVEL THE WHOLE PACKAGE OF COMMITTEE I COMPROMISES REACHED AT THIS SESSION. THIS FEAR WAS ECHOED BY KAZMIN OF THE SOVIET DELEGATION AT A LATER MEETING WITH USDEL REPS. HE INQUIRED WHY THE US THOUGHT THAT AGREEMENT ON FINANCIAL ARRANGEMENTS MIGHT BE REACHED AT A LATER SESSION IF IT COULD NOT BE REACHED NOW. THE USDEL REPS

REPLIED THAT AT THE NEXT SESSION AMERICAN TAX TREATMENT MIGHT BE CLEARER AND US SEABED MINING LEGISLATION MIGHT CLARIFY THE THINKING OF THE G-77 ON THE ISSUE OF WHETHER THEY WANT A TREATY OR IDEOLOGICAL PURITY. THIS NEGOTIATING GROUP WAS ATTEMPTING REALLY FOR THE FIRST TIME TO COME TO GRIPS WITH THESE COMPLEX ISSUES, AND, NOW THAT THE LINES WERE DRAWN, TIME WAS NEEDED FOR OPPOSING POSITIONS TO PERCOLATE.

4. THE U.S. EMPHASIZED TO KOH THAT THE GAP IN THE FIGURES BETWEEN DIFFERENT PROPOSALS WAS TOO WIDE TO BE BRIDGED AT THIS TIME. A U.S. INDUSTRY REPRESENTATIVE (DUBS) STATED THAT, IN HIS OPINION, UNDER CURRENT US TAX LAW EVEN THE PRESENT AMERICAN PROPOSAL WOULD BE UNATTRACTIVE
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TO US SEABED MINERS.

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5. NG-3 CONTINUED DISCUSSION OF THE COUNCIL'S COMPOSITION AND VOTING PROCEDURES. THERE WAS INCREASING SENTIMENT VOICED AGAINST A LARGE INCREASE IN THE SIZE OF THE COUNCIL. EXPECTATIONS ARE THAT CHAIRMAN ENGO MAY PRODUCE A REVISED TEXT OF PARAS 1 AND 7 OF ARTICLE 159 FOR CONSIDERATION BY

THE FULL COMMITTEE I. NO TEXT WILL BE PRODUCED BY NG-3 ITSELF.

6. COMMITTEE II (INFORMAL) RESUMED DISCUSSION OF THE LEGAL STATUS OF THE EXCLUSIVE ECONOMIC ZONE (EEZ), WITH SPECIAL REFERENCE TO ARTICLE 55. THE INFORMAL USSR AMENDMENT, INTRODUCED MAY 10, GAINED FURTHER SUPPORT FROM: TURKEY, SYRIA, BAHRAIN, THE NETHERLANDS, AND UKRAINE. A GROUP OF 50 STATES, HOWEVER, LED BY MEXICO, INTRODUCED A COUNTERAMENDMENT TO ADD A NEW PARA TO ARTICLE 55 AS FOLLOWS: "THE EXCLUSIVE ECONOMIC ZONE IS NOT A PART OF THE HIGH SEAS NOR OF THE TERRITORIAL SEA." THE 50 STATES WERE: ANGOLA, ARGENTINA, BANGLADESH, BRAZIL, CAPE VERDE, CHILE, COLOMBIA, CONGO, EGYPT, FIJI, GABON, GHANA, GUATAMELA, GUINEA-BISSAU, GUYANA, HAITI, HONDURAS, ICELAND, INDIA, IRAN, IVORY COAST, KENYA, LIBERIA, MADAGASCAR, MAURITANIA, CONFIDENTIAL

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MAURITIUS, MEXICO, MOROCCO, MOZAMBIQUE, NEW ZEALAND, NICARAGUA, NIGERIA, NORWAY, OMAN, PAKISTAN, PAPUA NEW GUINEA, PAKISTAN, PANAMA, PERU, PHILIPPINES, REPUBLIC OF KOREA, SAUDI ARABIA, SENEGAL, SIERRA LEONE, SOMALIA, SPAIN, TUNISIA, URUGUAY, VENEZUELA, AND YUGOSLAVIA.

THE COUNTER-PROPOSAL SHOULD BE VIEWED MORE AS A REACTION TO THE SOVIET SUGGESTION THAN AN INDEPENDENT INITIATIVE TO MODIFY THE LANGUAGE OF THE PRESENT TEXT. THIS VIEW WAS SUPPORTED AS A DISTINCT POSITION BY THE DEMOCRATIC REPUBLIC OF YEMEN, CANADA, INDONESIA, PORTUGUAL, AND NORTH KOREA. COMMENT: IT APPEARS THAT THE SOVIETS HAVE FAILED IN THEIR BID TO ALTER THE ICNT PROVISIONS ON THE LEGAL STATUS OF THE EEZ. IF, HOWEVER, THEY CONTINUE TO ADVANCE THEIR PROPOSITION, THE COALITION OPPOSED TO IT COULD CONCEIVABLY PRODUCE RESULTS INIMICAL TO U.S. INTERESTS BY PRODUCING UNFORTUNATE REMARKS ON THE RECORD (LEGISLATIVE HISTORY). END COMMENT.

7. AUSTRIA INTRODUCED THE COMPROMISE PROPOSAL: "NO STATE MAY VALIDLY PURPORT TO SUBJECT TO ITS SOVEREIGNTY ANY PART OF THE SEA BEYOND ITS TERRITORIAL SEA; THIS BEING WITHOUT PREJUDICE TO THE SPECIFIC LEGAL REGIME OF THE EXCLUSIVE ECONOMIC ZONE AS LAID DOWN IN PART V OF THIS CONVENTION."

8. IN NG-6, MOST STATES RESTATED THEIR WELL-KNOWN POSITIONS. SIGNIFICANTLY, THE ARAB GROUP, LED BY EGYPT, REAFFIRMED SUPPORT FOR THE 200-MILE DISTANCE CRITERION. THIS FURTHER COMPLICATES THE WORK OF NG-6 SINCE IT ADDS YET ANOTHER PROPOSAL, COMMANDING

IMPORTANT SUPPORT, TO THE ONES ALREADY SUBMITTED BY
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IRELAND AND THE USSR.

9. THE SUGGESTION BY THE SOVIET UNION THAT A NEW, MORE COMPREHENSIVE STUDY BE INITIATED UNDER THE AUSPICES OF THE IOC WAS PREDICTABLY OPPOSED BY THOSE IN FAVOR OF THE IRISH FORMULA AND SUPPORTED BY THE ADHERENTS OF THE USSR PROPOSAL. ONLY ONE NEW SUBSTANTIVE POSITION WAS REVEALED: ETHIOPIA CAME OUT IN SUPPORT OF THE USSR. THE U.S. (CLINGAN) SUPPORTED THE IRISH FORMULA BECAUSE IT SATISFIED THE THREE CRITICAL TESTS OF AN ACCEPTABLE DEFINITION: IT IS LEGALLY DEFENSIBLE, SCIENTIFICALLY SOUND, AND POLITICALLY REALISTIC AND REASONABLE.

10. CHAIRMAN AGUILAR REVEALED IN HIS CONCLUDING REMARKS THAT HE WOULD REPORT TO PLENARY THAT NG-6 HAD FAILED TO ACHIEVE A CONSENSUS ON THE MARGIN ISSUE, AND WOULD REQUEST AN EXTENSION OF THE DEBATE IN A CONTINUING EFFORT TO REACH AN ACCEPTABLE SOLUTION.

11. NG-5 SUCCESSFULLY COMPLETED WORK UNDER ITS PLENARY MANDATE. THE CHAIRMAN'S COMPROMISE TEXT FOR ARTICLE 296(4) PRESENTED ON MAY 9 (SENT SEPTTEL) WAS FOUND TO COMMAND SUCH WIDESPREAD SUBSTANTIAL SUPPORT AS TO JUSTIFY ITS INCLUSION IN ANY REVISED ICNT WHICH MAY EMERGE FROM THIS SESSION. THE CHAIRMAN STATED THAT HIS REPORT TO PLENARY WOULD DESCRIBE THE PROPOSAL AS HAVING CONDITIONAL CONSENSUS, AND THAT HE WOULD NOTE THE RESERVATIONS THAT WERE EXPRESSED IN THE DISCUSSIONS. EVEN JAPAN EXPLICITLY STATED THAT IT WOULD NOT STAND IN THE WAY OF REVISION OF THE ICNT ALONG THE LINES OF THE CHAIRMAN'S TEXT. ONLY INDIA STATED CATEGORICALLY THAT IT COULD NOT ACCEPT THE NEW TEXT. NIGERIA ANNOUNCED THAT IT CAN LIVE WITH THE TEXT.

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12. IN NG-7, THE SPECIFIC ENUNCIATION BY NORWAY OF TUESDAY'S "ELEMENTS TO GUIDE THE DEBATE" ON THE PROVISIONAL REGIME IN MARITIME BOUNDARY QUESTIONS DID NOT ELICIT BROAD-BASED OR ENTHUSIASTIC SUPPORT FROM THE SPEAKERS IN NEGOTIATING GROUP 7. NOR DID A PROPOSAL BY PAPUA NEW GUINEA FOR AN INTERIM MORATORIUM ON EXPLOITATION IN DISPUTED AREAS. THE DISCUSSION ON THE INTERIM REGIME GROUND TO A HALT AND THE GROUP TURNED TO THE DISPUTE SETTLEMENT ASPECTS OF THE DELIMITATION ISSUE.

13. THE U.S. PRESENTED, AS POSSIBLE BASES FOR COMPROMISE, THE FOLLOWING PROPOSALS FOR THE REVISION RESPECTIVELY OF ARTICLE 74/83, PARAGRAPH 2 AND ARTICLE 297, PARA 1(A): BEGIN TEXT
NG 7/17 - INFORMAL SUGGESTION BY THE UNITED STATES OF AMERICA

ARTICLES 74/83, PARA 2

2. IF NO AGREEMENT IS REACHED WITHIN A REASONABLE TIME ON THE SPECIFIC PRINCIPLES AND FACTORS TO BE CONSIDERED IN A PARTICULAR CASE OF DELIMITATION, THE
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PARTIES TO THE DISPUTE SHALL, AT THE REQUEST OF EITHER OF THEM, SUBMIT THIS QUESTION TO THE PROCEDURES FOR THE SETTLEMENT OF DISPUTES PROVIDED FOR IN PART XV OF THE PRESENT CONVENTION. THE PRINCIPLES AND FACTORS SPECIFIED BY THE COURT OR TRIBUNAL SHALL SERVE AS A BASIS FOR FURTHER NEGOTIATIONS BETWEEN THE PARTIES.

NG 7/18 - INFORMAL SUGGESTION BY THE UNITED STATES OF AMERICA

ARTICLE 297, SUBPARAGRAPH (1)(A)

(A) DISPUTES CONCERNING SEA BOUNDARY DELIMITATIONS BETWEEN ADJACENT OR OPPOSITE STATES, OR THOSE INVOLVING HISTORIC BAYS OR TITLES, WHICH: (I) RELATE TO SITUATIONS OR FACTS PRIOR TO 1 JANUARY 1978; OR (II) INVOLVE THE DETERMINATION OF ANY CLAIM TO SOVEREIGNTY OVER, OR OTHER RIGHTS WITH RESPECT TO, CONTINENTAL OR INSULAR LAND TERRITORY. END TEXT

THESE PROPOSALS WERE WIDELY ATTACKED BY BOTH SIDES. THOSE WHO FAVOR ACROSS-THE-BOARD COMPULSORY SETTLEMENT THOUGHT THE TEXTS GAVE TOO LITTLE JURISDICTION; THOSE WHO OPPOSE COMPULSORY SETTLEMENT THOUGHT IT PROVIDED TOO MUCH. AT THE END OF THE MEETING THE CHAIRMAN, ON REQUEST OF THE UAE, ARRANGED FOR THE CONTINUATION OF WORK ON THE DISPUTE SETTLEMENT PROBLEM IN A SMALL PRIVATE WORKING GROUP UNDER U.S. (SOHN) CHAIRMANSHIP IF THE MANDATE OF THE FULL NEGOTIATING GROUP IS EXTENDED ON THURSDAY.

14. THE SMALL VALLARTA GROUP (COMMITTEE III) DISCUSSED THE CANADIAN PROPOSAL (TO ALLOW INSPECTIONS OF VESSELS
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IN THE ECONOMIC ZONE IN CASE OF A THREAT OF POLLUTION, ARTICLE 221(5)) BUT REACHED NO CONCLUSION.

IT DID AGREE, HOWEVER, TO AMEND ARTICLE 222 (INTERVENTION) AS FOLLOWS:

"1. NOTHING IN THIS PART OF THE PRESENT CONVENTION SHALL PREJUDICE THE RIGHT OF STATES, PURSUANT TO GENERALLY ACCEPTED INTERNATIONAL RULES AND STANDARDS TO ADOPT AND ENFORCE MEASURES BEYOND THE TERRITORIAL SEA PROPORTIONATE TO THE ACTUAL OR THREATENED DAMAGE TO PROTECT THEIR COASTLINE AND RELATED INTERESTS, INCLUDING FISHING, FROM POLLUTION OR THREAT OF POLLUTION FOLLOWING UPON A MARITIME CASUALTY OR ACTS RELATING TO SUCH A CASUALTY, WHICH MAY REASONABLY BE EXPECTED TO RESULT IN MAJOR HARMFUL CONSEQUENCES.

2. FOR PURPOSES OF THIS ARTICLE, "MARITIME CASUALTY" MEANS A COLLISION OF SHIPS, STRANDING OR OTHER INCIDENT OF NAVIGATION, OR OTHER OCCURENCE ON BOARD A SHIP OR EXTERNAL TO IT RESULTING IN MATERIAL DAMAGE OR IMMINENT THREAT OF MATERIAL DAMAGE TO A SHIP OR CARGO."

THE EFFECT OF THE CHANGE TO THE FIRST PARAGRAPH PERMITS INTERVENTION BY COASTAL STATES FOLLOWING A MARITIME CASUALTY WITHOUT THE NECESSITY OF PROVING THAT GRAVE

AND IMMINENT DANGER EXISTS. THE CASUALTY, HOWEVER,
MUST BE REASONABLY EXPECTED TO RESULT IN MAJOR HARMFUL
CONSEQUENCES AND ACTIONS TAKEN MUST BE PROPORTIONATE
TO THE ACTUAL OR THREATENED DAMAGE. THE PARAGRAPH
TWO ALTERATION MERELY INSERTS THE DEFINITION OF
CASUALTY FROM THE 1969 INTERVENTION CONVENTION.
RICHARDSON

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